



9111-14

## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Modification of National Customs Automation Program Test Concerning the Automated Commercial Environment Partner Government Agency Message Set Regarding the Toxic Substances Control Act Certification Required by the Environmental Protection Agency**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning the transmission of electronic filings of data to the Automated Commercial Environment (ACE), known as the Partner Government Agency (PGA) Message Set test. This modification expands the use of the ACE PGA Message Set for the transmission of Environmental Protection Agency (EPA) Toxic Substances Control Act (TSCA) certification data. CBP invites public comment concerning the test program.

**DATES:** The modified PGA Message Set test will commence no earlier than [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], and will continue until concluded by way of announcement in the **Federal Register**. Comments will be accepted through the duration of the test.

**ADDRESSES:** Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, ACE Business Office (ABO), Office

of International Trade, at josephine.baiamonte@cbp.dhs.gov. In the subject line of your email, please indicate, “Comment on EPA TSCA PGA Message Set Test FRN”.

**FOR FURTHER INFORMATION CONTACT:** For EPA-related PGA Message Set test questions, interested parties should send an email message to Loraine Passe, at Passe.Loraine@epa.gov, and they should also send a copy of that message to their assigned CBP client representative. Interested parties without an assigned CBP client representative should direct their questions to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject heading “PGA Message Set EPA Test FRN-Request to Participate”.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993) (Customs Modernization Act). See 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the legacy Customs Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing.

ACE will streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all its communities of interest. The ability to meet

these objectives depends upon successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality, designed to introduce a new capability or to replace a specific legacy ACS function. Each release will begin with a test, and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases, and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XIII, "Development of ACE Prototypes". The procedures and criteria related to participation in the previous ACE notices remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

## **I. Authorization for the Test**

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95-21.

## **II. Partner Government Agency Message Set Test**

On December 13, 2013, CBP published in the **Federal Register** a notice announcing an NCAP test called the PGA Message Set test. See 78 FR 75931. This test is in furtherance of key

CBP International Trade Data System (ITDS) initiatives, as provided in the Security and Accountability For Every Port Act of 2006 (“SAFE Port Act”), Pub. L. 109-347, 120 Stat. 1884 (19 U.S.C. 1411(d)), to achieve the vision of ACE as the “single window” for the Government and trade community. ACE will automate and enhance the interaction between international trade partners, CBP, and PGAs by facilitating electronic collection, processing, sharing, and review of trade data and documents required by Federal agencies during the cargo import and export process. The use of ACE to process trade data will significantly increase efficiency and reduce costs compared to the traditional manual method of processing of paper forms.

The PGA Message Set is the data required to satisfy the PGAs’ reporting requirements. ACE will enable the trade community to submit trade-related data required by the PGAs only once to CBP, thus improving communications between agencies and filers, and shortening entry processing time. This data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of the ACE Cargo Release process. The data will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will satisfy the filer’s obligation to make entry and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent manual processing of paper documents.

The December 2013 **Federal Register** notice announced that ACE would be accepting certain PGA data elements for the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. On February

4, 2015, CBP published the announcement that it had broadened the PGA Message Set test to accept additional PGA data elements for the EPA, for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. See 80 FR 6098.

This document announces CBP’s plan to expand the PGA Message Set to allow for the transmission of a certification required by the EPA concerning chemical substances imported in bulk or as part of a mixture, or articles containing a chemical substance or mixture (collectively referred to hereinafter as “chemical substances”). The importation of chemical substances is governed by the Toxic Substances Control Act (“TSCA”) (15 U.S.C. 2601 et seq.), and by regulations issued under the authority of section 13(b) of TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator of the Environmental Protection Agency. 19 CFR 12.118. The Secretary of the Treasury shall refuse entry of chemical substances offered for entry in violation of, or not in compliance with rules and orders issued under the TSCA.

The regulations implementing TSCA are contained in §§ 12.118 through 12.127 and § 127.28 of the CBP Regulations (19 CFR 12.118 through 12.127 and 127.28). Importers (or authorized agents of importers) of chemical substances are required to certify either that all chemicals in a shipment are subject to TSCA and comply with all applicable rules and orders or that the chemical shipment is not subject to TSCA. See 19 CFR 12.121(a)(1). Generally, this TSCA certification must be filed with the director of the port of entry before release of the shipment and must appear as a typed or stamped statement on an appropriate entry document or as an attachment to that entry document. See 19 CFR 12.121(a)(2).

CBP is expanding the use of the PGA Message set to include the required TSCA certification. Filers will be required to electronically transmit the certification required in 19

CFR 12.121(a)(1) indicating either that the chemical substances in the shipment comply with TSCA and all applicable rules and orders or that the chemical substances in the shipment are not subject to TSCA. The technical requirements for submitting the EPA required TSCA certification can be found on the website: <http://www.cbp.gov/trade/ace/features>. Select the “PGA Integration” tab, click “ACE Customs and Trade Automated Interface Requirements (CATAIR)” under the Technical column, select the “PGA Message Set” and then scroll down for EPA-specific CATAIR guidelines and message set samples.

The test applies to all modes of transportation and will be in effect at all ports. During this test, participants will collaborate with CBP and the EPA to examine the effectiveness of the single window capability.

### **III. Test Participant Responsibilities**

PGA Message Set test participants will be required to:

- Transmit the EPA-required TSCA certification electronically once through the single window for use by both CBP and the EPA, using the PGA Message Set;
- Transmit the required information only as part of an ACE Entry Summary certified for cargo release;
- Transmit import filings to CBP via ABI in response to a request for documentation or in response to a request for release information for certified ACE Cargo Release;
- Only transmit to CBP information that has been requested by CBP or EPA;
- Use a software program that has completed ACE certification testing for the PGA Message Set; and
- Take part in a CBP evaluation of this test.

Participants are reminded that they should only file documents that CBP can accept electronically. The documents CBP can accept electronically are listed under the Document Image System (DIS) tab of the ACE Features page on the website <http://www.cbp.gov/trade/ace/features>, and, for participants using ABI, in the PGA Message Set part of the CATAIR. When CBP cannot accept additional information electronically, the filer must file the additional information by paper. See 78 FR 75931 at 75934-35 (December 13, 2013), for information on Confidentiality (Section XIII) and Misconduct under the PGA Message Set Test (Section XIV).

#### **IV. Waiver of Regulation under the Test**

For purposes of this test, 19 CFR §§ 12.118 through 12.127 and § 127.28 will be waived for test participants only insofar as eliminating any requirement that may appear in these regulations to file a paper version of the TSCA certification. In its place, test participants are required to transmit electronically the data elements via the PGA Message Set and any supporting documents via DIS. This document does not waive any recordkeeping requirements found in part 163 of title 19 of the CFR (19 CFR part 163) and the appendix to part 163 (commonly known as the “(a)(1)(A) list”).

#### **V. Eligibility Criteria**

As announced in this notice, the use of the PGA Message Set test is expanding to accept EPA-required TSCA certification data and supporting documentation. All other eligibility criteria as specified in prior PGA Message Set test notices remain the same. To be eligible to apply for this modification of the PGA Message Set test, the applicant must be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release. CBP will accept an

unlimited number of participants for the test. Test applicants must meet the eligibility criteria described in this document to participate in the test program.

## **VI. Application Process**

Any parties seeking to participate in the modified PGA Message Set test concerning EPA TSCA data should send an email message to Loraine Passe, at [Passe.Loraine@epa.gov](mailto:Passe.Loraine@epa.gov), and they should also send a copy of that message to their assigned CBP client representative. Interested parties without an assigned CBP client representative should submit an email to Steven Zaccaro at [steven.j.zaccaro@cbp.dhs.gov](mailto:steven.j.zaccaro@cbp.dhs.gov) with the subject heading “PGA Message Set EPA Test FRN-Request to Participate”.

CBP client representatives will work with test participants to provide information regarding the transmission of this data. CBP will begin to accept applications on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by email of their selection and the starting date of their participation. Selected participants may have different starting dates. An applicant providing incomplete information, or otherwise not meeting participation requirements, will be notified by email and given the opportunity to resubmit its application.

## **VII. Test Duration**

The modified test will begin no earlier than [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and will continue until concluded by way of announcement in



the **Federal Register**. At the conclusion of the test, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of the EPA-required TSCA certification and the processing of entries for chemical substances and mixtures. The final results of the evaluation will be published in the **Federal Register** and the Customs Bulletin as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

## **VIII. Comments**

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct, and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

## **IX. Paperwork Reduction Act**

The collection of information in this test modification regarding the required TSCA certification has been reviewed by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). OMB has determined that the TSCA certification is exempt from the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## **X. Confidentiality**

Data submitted and entered into the ACE Portal includes information that is exempt or restricted from disclosure by law, such as by the Trade Secrets Act (18 U.S.C. 1905). As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

## **XI. Misconduct Under the Test**

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.
- Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing [Deborah.Augustin@cbp.dhs.gov](mailto:Deborah.Augustin@cbp.dhs.gov).

The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or when public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice

will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing Deborah.Augustin@cbp.dhs.gov. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

## **XII. PGA Programs Accepting Data through the ACE PGA Message Set Test**

Information about PGA participation in ACE, current operational capabilities, and plans for future enhancements are available on this website: <http://www.cbp.gov/trade/ace/features>. Select the "PGA Integration" tab and click "ACE PGA Forms List" under the References column for more information on agencies with pilots in preparation for electronic filing.

## **XIII. Development of ACE Prototypes**

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).

- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE), 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction; 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond, Identification of Principal on an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).

- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Animal and Plant Health Inspection Service: International Trade Data System Test Concerning the Electronic Submission to the Automated Commercial Environment of Data Using the Partner Government Agency Message Set: 80 FR 59721 (October 2, 2015).
- Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry): 80 FR 61278 (October 13, 2015).

- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Announcement of the Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account To Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).

Dated: February 5, 2016.

Brenda B. Smith  
Assistant Commissioner  
Office of International Trade

[FR Doc. 2016-02716 Filed: 2/9/2016 8:45 am; Publication Date: 2/10/2016]